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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 13, 2002

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: In the matter of
Adopting Revisions to the Rules
Governing Accelerated Benefits
Provisions

CASE NO. INS-2002-00117

ORDER TO TAKE NOTICE

WHEREAS, § 12.1-13 of the Code of Virginia provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia;

WHEREAS, the rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code;

WHEREAS, the Bureau of Insurance has submitted to the Commission proposed revisions to Chapter 70 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Accelerated Benefits Provisions," which amend the rules at 14

Effective April 9, 2002, the new Case Management System requires that the case number format for all Commission orders change from, e.g., PUE010663 to the following: PUE-2001-00663.

VAC 5-70-10, 14 VAC 5-70-20, 14 VAC 5-70-30, 14 VAC 5-70-40, 14 VAC 5-70-80, and 14 VAC 5-70-130;

WHEREAS, the proposed revisions reflect the addition of § 38.2-3115.1 of the Code of Virginia enacted by the General Assembly in its 2002 session, which is effective July 1, 2002, and provides that insurers may include a policy provision for accelerated payment of life insurance benefits to the insured during his lifetime under certain conditions; and

WHEREAS, the Commission is of the opinion that the proposed revisions should be considered for adoption with an effective date of July 1, 2002;

THEREFORE, IT IS ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Accelerated Benefits Provisions," which amend the rules at 14 VAC 5-70-10, 14 VAC 5-70-20, 14 VAC 5-70-30, 14 VAC 5-70-40, 14 VAC 5-70-80, and 14 VAC 5-70-130, be attached hereto and made a part hereof;

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed revisions shall file such comments or hearing request on or before June 12, 2002, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2002-00117;

(3) If a written request for a hearing on the proposed revisions is filed on or before June 12, 2002, the Commission shall conduct a hearing in the Commission's Courtroom, 2nd Floor,

Tyler Building, 1300 East Main Street, Richmond, Virginia 23219 at 10:30 a.m. on June 18, 2002, to consider the adoption of the attached proposed revisions proposed by the Bureau of Insurance with an effective date of July 1, 2002;

(4) If no written request for a hearing on the proposed revisions is filed on or before June 12, 2002, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions, may adopt the revisions proposed by the Bureau of Insurance;

(5) AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky, who forthwith shall give further notice of the proposed adoption of the revisions to the rules by mailing a copy of this Order, together with a draft of the proposed revisions, to all life and health insurers, fraternal benefit societies, cooperative non-profit life benefit companies or mutual assessment life, accident and sickness insurers licensed by the Commission to write life insurance in the Commonwealth of Virginia; and by forwarding a copy of this Order, together with a draft of the proposed revisions, to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations; and

(6) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (5) above.

STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

CHAPTER 70.

RULES GOVERNING ACCELERATED BENEFITS PROVISIONS.

14 VAC 5-70-10. Purpose.

The purpose of this chapter (14 VAC 5-70-10 et seq.), is to regulate accelerated benefit provisions of individual and group life insurance policies and riders to such policies and to provide required standards of disclosure. This chapter shall apply to all accelerated benefits provisions of individual and group life insurance policies and riders to such policies except those subject to Rules Governing Long-Term Care Insurance (Chapter 200 of this title, 14 VAC 5-200-10 et seq.), issued or delivered in this Commonwealth, on or after ~~June 1, 1992~~ July 1, 2002.

14 VAC 5-70-20. ~~Effective date; compliance~~ Compliance with the chapter.

~~A. This chapter (14VAC5-70-10 et seq.) shall be effective on June 1, 1992.~~

~~B. A. No new policy form shall be approved on or after June 1, 1992, unless it complies with this chapter (14VAC5-70-10 et seq.).~~ Any policy or rider complying with this chapter and other regulatory requirements may be sold, solicited or negotiated in this Commonwealth, or in the case of group life insurance policies or riders, re-issued or renewed in this Commonwealth with accelerated benefit provisions as set forth in this chapter.

~~C. B. No policy form or rider shall be delivered or issued for delivery in this Commonwealth on or after September 1, 1992~~ July 1, 2002, unless it complies with this chapter ~~(14VAC5-70-10 et seq.)~~.

14 VAC 5-70-30. Applicability and scope.

Except as otherwise specifically provided, this chapter (~~14VAC5-70-10 et seq.~~), applies shall apply to accelerated benefit provisions on individual and group life insurance policies or riders to such policies delivered or issued for delivery in this Commonwealth, on or after the effective date hereof July 1, 2002, by insurers, fraternal benefit societies, cooperative non-profit life benefit companies or mutual assessment life, accident and sickness insurers, and to renewals or re-issues of group life insurance policies or riders occurring on or after July 1, 2002.

14 VAC 5-70-40. Definitions.

For the purposes of this chapter, ~~14VAC5-70-10 et seq.~~:

"Accelerated benefits" ~~as used in this chapter (14VAC5-70-10 et seq.)~~, means benefits payable under a life insurance contract;

1. To a policyholder or certificateholder, during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider; and
2. Which reduce the death benefit otherwise payable under the life insurance contract; and
3. Which are payable upon the occurrence of a single qualifying event which results in the payment of a benefit amount fixed at the time of acceleration.

"Qualifying event" means one or more of the following:

1. A medical condition which would result in a drastically limited life span as specified in the contract, for example, 24 months or less;
2. A medical condition which has required or requires extraordinary medical intervention, such as, but not limited to, major organ transplant or continuous artificial life support, without which the insured would die;

3. Any condition which usually requires continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of his or her life;

4. A medical condition which would, in the absence of extensive or extraordinary medical treatment, result in a drastically limited life span. Such conditions may include, BUT ARE NOT LIMITED TO, one or more of the following:

- a. Coronary artery disease resulting in an acute infarction or requiring surgery;
- b. Permanent neurological deficit resulting from cerebral vascular accident;
- c. End stage renal failure;
- d. Acquired Immune Deficiency Syndrome; or
- e. Other medical conditions which the Commission shall approve for any particular filing; or

5. A condition where a qualified health care provider or court of competent jurisdiction has determined that the insured is no longer able to perform at least two of the following activities of daily living:

- a. bathing;
- b. dressing;
- c. continence;
- d. eating;
- e. toileting; or
- f. transferring;

6. A condition for which a qualified health care provider or court of competent jurisdiction has determined that the insured requires direct supervision by another person during the majority of each day to protect the health and safety of the insured or any other person; or

57. Other qualifying events which the Commission shall approve for any particular filing.

14 VAC 5-70-80. Required disclosure provision; descriptive title; tax consequences; solicitations and disclosures; effect of benefit payment.

A. The terminology "accelerated benefit" shall be included in the descriptive title. Products regulated under this chapter (~~14VAC5-70-10 et seq.~~), shall not be described or marketed as long-term care insurance or as providing long-term care or other type of illness benefits.

B. A disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

C.1. A written disclosure including, but not necessarily limited to, a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits shall be given to the applicant. The description shall include an explanation of any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens.

a. In the case of agent solicited insurance, the agent shall provide the disclosure form to the applicant prior to or concurrently with the application. Acknowledgment of the disclosure shall be signed by the applicant and writing agent.

b. In the case of a solicitation by direct response methods, the insurer shall provide the disclosure form to the applicant at the time the policy is delivered, with a notice that a full premium refund shall be received if the policy is returned to the company within the free look period.

c. In the case of group insurance policies, the disclosure form shall be contained as part of the certificate of coverage or any related document furnished by the insurer for the individual certificateholder.

2. If there is a premium or cost of insurance charge for the accelerated benefit, the insurer shall give the applicant a generic illustration numerically demonstrating any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens.

a. In the case of agent solicited insurance, the agent shall provide the illustration to the applicant prior to or concurrently with the application.

b. In the case of a solicitation by direct response methods, the insurer shall provide the illustration to the applicant at the time the policy is delivered.

c. In the case of group insurance policies, the disclosure form shall be contained as part of the certificate of coverage or any related document furnished by the insurer for the individual certificateholder.

3.a. Insurers with financing options other than as described in ~~14VAC5-70-120 A 2 and A 3~~ subdivisions A 2 and A 3 of this subsection shall disclose to the policyowner any premium or cost of insurance charge for the accelerated benefit. These insurers shall make a reasonable effort to assure that the certificateholder is aware of any additional premium or cost of insurance charge if the certificateholder is required to pay such charge.

b. Insurers shall furnish an actuarial demonstration to the Commission when filing the product disclosing the method of arriving at their cost for the accelerated benefit.

4. The insurer shall disclose to the policyowner any administrative expense charge. The insurer shall make a reasonable effort to assure that the certificateholder is aware of any administrative expense charge if the certificateholder is required to pay such charge

D. When a policyowner or certificateholder requests an acceleration, the insurer shall send a statement to the policyowner or certificateholder and irrevocable beneficiary showing any effect that the payment of the accelerated benefit will have on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens. The statement shall disclose that receipt of accelerated benefit payments may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements. In addition, receipt of an accelerated benefit payment may be taxable and assistance should be sought from a personal tax advisor. When a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policyowner or certificateholder and irrevocable beneficiary. When the insurer agrees to accelerate death benefits, the insurer shall issue an amended schedule page to the policyholder or notify the certificateholder under a group policy to reflect any new, reduced in-force face amount of the contract.

14 VAC 5-70-130. Actuarial disclosure and reserves.

A. A qualified actuary ~~should~~ shall be required to describe the accelerated benefits, the risks, the expected costs and the calculation of statutory reserves in an actuarial memorandum accompanying each filing. The insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits payable under these provisions. These descriptions shall be made available for examination by the Commission upon request.

B.1. When benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves shall be determined in accordance with §§ 38.2-3126 through 38.2-3144 of the Code of Virginia. All valuation assumptions used in constructing the reserves shall be determined as appropriate for statutory valuation purposes by a member in good standing of the American Academy of Actuaries. Mortality tables and interest currently recognized for life insurance reserves by the National Association of Insurance Commissioners may be used as well as appropriate assumptions for the other provisions incorporated in the policy form. The actuary must follow both actuarial standards and certification for good and sufficient reserves. Reserves in the aggregate should be sufficient to cover:

- a. Policies upon which no claim has yet arisen.
- b. Policies upon which an accelerated claim has arisen.

2. For policies and certificates which provide actuarially equivalent benefits, no additional reserves need to be established.

3. Policy liens and policy loans, including accrued interest, represent assets of the company for statutory reporting purposes. For any policy on which the policy lien exceeds the policy's statutory reserve liability such excess must be held as a non- admitted asset.